

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JUN 08 2004

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

THOMAS A. DIBARTOLO

Petitioner,

v.

JOSEPH LEHMAN, CAROL  
PORTER and ASHBEL T. WALL,  
III,

Respondents.

NO. CS-03-094-RHW

**ORDER DENYING CERTIFICATE  
OF APPEALABILITY**

By order entered May 4, 2004, the Court adopted Magistrate Judge Leavitt's Report and Recommendation (Ct. Recs. 23, 25) and denied Defendant's Habeas Petition (Ct. Rec. 26). Defendant has filed a Notice of Appeal (Ct. Rec. 28). The Court interprets this Notice of Appeal as an informal request for a certificate of appealability. *See* Fed. R. App. P. 22(b).

In a habeas corpus proceeding before a district court, the prisoner can appeal the final order if a court of appeals justice or district court judge issues a certificate of appealability ("COA"). 28 U.S.C. § 2253. A court may issue a COA only upon the "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253- (c)(2). The United States Supreme Court, in summing up the standard for "substantial showing," held that a prisoner must demonstrate that "reasonable jurists could debate whether (or for that matter, agree) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), *citing Barefoot v.*

1 *Estelle*, 463 U.S. 880, 894 (1983). For reasons set out in the May 4, 2004 order, as  
2 well as the Report and Recommendation of Magistrate Judge Leavitt, the Court sees no  
3 arguable points raised by the Defendant that satisfy this standard.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 Defendant's Request for Certificate of Appealability (Ct. Rec. 115) is **DENIED**.

6 **IT IS SO ORDERED.** The District Court Executive is hereby directed to enter  
7 this order and to furnish copies to Defendant and to counsel for Plaintiff.

8 **DATED** this 7 day of June 2004.

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12 ROBERT H. WHALEY  
13 United States District Judge  
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